
ENGROSSED SENATE BILL 5377

State of Washington

62nd Legislature

2011 Regular Session

By Senators Morton, Swecker, and Stevens

Read first time 01/21/11. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to homeowners' associations; amending RCW 64.38.010
2 and 64.38.025; adding new sections to chapter 64.38 RCW; and providing
3 an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 64.38.010 and 1995 c 283 s 2 are each amended to read
6 as follows:

7 ~~((For purposes of this chapter:))~~ The definitions in this section
8 apply throughout this chapter unless the context clearly requires
9 otherwise.

10 (1) "Homeowners' association" or "association" means a corporation,
11 unincorporated association, or other legal entity, each member of which
12 is an owner of residential real property located within the
13 association's jurisdiction, as described in the governing documents,
14 and by virtue of membership or ownership of property is obligated to
15 pay real property taxes, insurance premiums, maintenance costs, or for
16 improvement of real property other than that which is owned by the
17 member. "Homeowners' association" does not mean an association created
18 under chapter 64.32 or 64.34 RCW.

1 (2) "Governing documents" means the articles of incorporation,
2 bylaws, plat, declaration of covenants, conditions, and restrictions,
3 rules and regulations of the association, or other written instrument
4 by which the association has the authority to exercise any of the
5 powers provided for in this chapter or to manage, maintain, or
6 otherwise affect the property under its jurisdiction.

7 (3) "Board of directors" or "board" means the body, regardless of
8 name, with primary authority to manage the affairs of the association.

9 (4) "Common areas" means property owned, or otherwise maintained,
10 repaired or administered by the association.

11 (5) "Common expense" means the costs incurred by the association to
12 exercise any of the powers provided for in this chapter.

13 (6) "Residential real property" means any real property, the use of
14 which is limited by law, covenant or otherwise to primarily residential
15 or recreational purposes.

16 (7)(a) "Affiliate" means any person who controls, is controlled by,
17 or is under common control with the developer.

18 (b) For the purposes of this subsection:

19 (i) A person "controls" another person if the person: (A) Is a
20 general partner, officer, director, or employer of the developer; (B)
21 directly or indirectly or acting in concert with one or more other
22 persons, or through one or more subsidiaries, owns, controls, holds
23 with power to vote, or holds proxies representing more than twenty
24 percent of the voting interest in the developer; (C) controls in any
25 manner the election of a majority of the directors of the developer; or
26 (D) has contributed more than twenty percent of the capital of the
27 developer.

28 (ii) A person "is controlled by" another person if the other
29 person: (A) Is a general partner, officer, director, or employer of
30 the person; (B) directly or indirectly or acting in concert with one or
31 more other persons, or through one or more subsidiaries, owns,
32 controls, holds with power to vote, or holds proxies representing more
33 than twenty percent of the voting interest in the person; (C) controls
34 in any manner the election of a majority of the directors of the
35 person; or (D) has contributed more than twenty percent of the capital
36 of the person.

37 (iii) Control does not exist if the powers described in this

1 subsection are held solely as security for an obligation and are not
2 exercised.

3 (8) "Board of directors" means the body, regardless of name, with
4 primary authority to manage the affairs of the association.

5 (9) "Developer" means: (a) Any person who reserves any developer
6 control in the governing documents; or (b) any person who exercises
7 developer control or to whom developer control is transferred.

8 (10) "Developer control" means the right of the developer or
9 persons designated by the developer to appoint and remove officers and
10 members of the board of directors, or to veto or approve a proposed
11 action of the board or association.

12 (11) "Homeowner" means any person who is an owner of real property
13 subject to the governing documents.

14 (12) "Person" means a natural person, corporation, partnership,
15 limited partnership, trust, governmental subdivision or agency, or
16 other legal entity.

17 (13) "Special developer rights" means rights reserved for the
18 benefit of a developer to: (a) Complete improvements indicated on
19 survey maps; (b) exercise any development right; (c) maintain sales
20 offices, management offices, and signs advertising the development; (d)
21 use easements through the common elements for the purpose of making
22 improvements to the development; (e) make the development part of a
23 larger development; or (f) appoint or remove any officer of the
24 association or any master association or any member of the board of
25 directors, or to veto or approve a proposed action of the board or
26 association, during any period of developer control.

27 **Sec. 2.** RCW 64.38.025 and 1995 c 283 s 5 are each amended to read
28 as follows:

29 (1) Except as provided in the association's governing documents or
30 this chapter, the board of directors shall act in all instances on
31 behalf of the association. In the performance of their duties, the
32 officers and members of the board of directors shall exercise the
33 degree of care and loyalty required of an officer or director of a
34 corporation organized under chapter 24.03 RCW. An obligation of good
35 faith is imposed in the performance and enforcement of all contracts
36 and duties governed by this chapter and in all other transactions

1 involving developers, the board of directors, associations, and their
2 members. For the purposes of this section, "good faith" means honesty
3 in fact and the observation of reasonable standards of fair dealing.

4 (2) The board of directors shall not act on behalf of the
5 association to amend the articles of incorporation, to take any action
6 that requires the vote or approval of the owners, to terminate the
7 association, to elect members of the board of directors, or to
8 determine the qualifications, powers, and duties, or terms of office of
9 members of the board of directors; but the board of directors may fill
10 vacancies in its membership of the unexpired portion of any term.

11 (3) Within thirty days after adoption by the board of directors of
12 any proposed regular or special budget of the association, the board
13 shall set a date for a meeting of the owners to consider ratification
14 of the budget not less than fourteen nor more than sixty days after
15 mailing of the summary. Unless at that meeting the owners of a
16 majority of the votes in the association are allocated or any larger
17 percentage specified in the governing documents reject the budget, in
18 person or by proxy, the budget is ratified, whether or not a quorum is
19 present. In the event the proposed budget is rejected or the required
20 notice is not given, the periodic budget last ratified by the owners
21 shall be continued until such time as the owners ratify a subsequent
22 budget proposed by the board of directors.

23 (4) (~~The owners by a majority vote of the voting power in the~~
24 ~~association present, in person or by proxy, and entitled to vote at any~~
25 ~~meeting of the owners at which a quorum is present, may remove any~~
26 ~~member of the board of directors with or without cause.)) Any meeting
27 by the board of directors must be held at a time and place that is
28 convenient for the homeowners of the association. A convenient time is
29 between five o'clock p.m. and nine o'clock p.m. on a weekday or between
30 nine o'clock a.m. and five o'clock p.m. on a Saturday or Sunday. A
31 convenient place means a location within twenty miles from any property
32 subject to the governing documents.~~

33 (5)(a) Subject to subsection (7) of this section, the governing
34 documents may provide for a period of developer control of the
35 association, during which period a developer, or persons designated by
36 the developer, may: (i) Appoint and remove the officers and members of
37 the board of directors; or (ii) veto or approve a proposed action of
38 the board or association. A developer has a fiduciary duty in

1 appointing and removing nonowner members of the board of directors. A
2 developer is responsible for actions of nonowner members of the board
3 of directors appointed by the developer under the doctrine of
4 respondeat superior. A developer's failure to veto or approve proposed
5 action in writing within thirty days after receipt of written notice of
6 the proposed action shall be deemed approval by the developer board of
7 directors.

8 (b) Regardless of the period provided in the governing documents,
9 a period of developer control terminates no later than the earlier of:
10 (i) Sixty days after conveyance of seventy-five percent of the lots
11 that may be created to owners other than the developer; or (ii) the
12 date on which the developer records an amendment to the declaration
13 pursuant to which the developer voluntarily surrenders the right to
14 further appoint and remove officers and members of the board of
15 directors. A developer may voluntarily surrender the right to appoint
16 and remove officers and members of the board of directors before
17 termination of that period in accordance with (b)(i) of this
18 subsection, but in that event the developer may require, for the
19 duration of the period of developer control, that specified actions of
20 the association or board of directors, as described in a recorded
21 instrument executed by the developer, be approved by the developer
22 before they become effective.

23 (6) Not later than sixty days after conveyance of twenty-five
24 percent of the lots that may be created to owners other than a
25 developer, at least one member and not less than twenty-five percent of
26 the members of the board of directors must be elected by owners other
27 than the developer. Not later than sixty days after conveyance of
28 fifty percent of the units that may be created to owners other than a
29 developer, not less than thirty-three and one-third percent of the
30 members of the board of directors must be elected by owners other than
31 the developer.

32 (7) Within thirty days after the termination of any period of
33 developer control, the owners must elect a board of directors of at
34 least three members, at least a majority of whom must be owners. The
35 number of directors need not exceed the number of lots subject to the
36 governing documents. The board of directors must elect the officers.
37 These members of the board of directors and officers take office upon
38 election.

1 (8) Notwithstanding any provision of the governing documents to the
2 contrary, the owners, by a two-thirds vote at any meeting of the owners
3 at which a quorum is present, may remove any member of the board of
4 directors with or without cause, other than a member appointed by the
5 developer. The developer may not remove any member of the board of
6 directors elected by the owners.

7 **NEW SECTION. Sec. 3.** A new section is added to chapter 64.38 RCW
8 to read as follows:

9 Within sixty days after the termination of the period of developer
10 control, or in the absence of a period of developer control, within
11 sixty days after the first conveyance of a lot subject to the governing
12 documents, the developer must deliver to the association all property
13 of the owners and of the association held or controlled by the
14 developer including, but not limited to:

15 (1) The original or a photocopy of all the governing documents;

16 (2) The minute books, including all minutes, and other books and
17 records of the association;

18 (3) Resignations of officers and members of the board who are
19 required to resign because the developer is required to relinquish
20 control of the association;

21 (4) The financial records, including canceled checks, bank
22 statements, and financial statements of the association, and source
23 documents from the time of incorporation of the association through the
24 date of transfer of control to the unit owners;

25 (5) Association funds or the control of the funds of the
26 association;

27 (6) All tangible personal property of the association, represented
28 by the developer to be the property of the association or ostensibly
29 the property of the association, and an inventory of the property;

30 (7) Insurance policies or copies thereof for the association;

31 (8) Any other permits issued by governmental bodies applicable to
32 the real estate subject to the governing documents in force or issued
33 within one year before the date of transfer of control to the unit
34 owners;

35 (9) All written warranties that are still in effect for the common
36 elements, or any other areas or facilities which the association has
37 the responsibility to maintain and repair, from the contractor,

1 subcontractors, suppliers, and manufacturers and all owners' manuals or
2 instructions furnished to the developer with respect to installed
3 equipment or building systems;

4 (10) A roster of owners and their addresses and telephone numbers,
5 if known, as shown on the developer's records;

6 (11) Any leases of the common elements or areas and other leases to
7 which the association is a party;

8 (12) Any employment contracts or service contracts in which the
9 association is one of the contracting parties or service contracts in
10 which the association or the owners have an obligation or a
11 responsibility, directly or indirectly, to pay some or all of the fee
12 or charge of the person performing the service; and

13 (13) All other contracts to which the association is a party.

14 NEW SECTION. **Sec. 4.** A new section is added to chapter 64.38 RCW
15 to read as follows:

16 (1) No special developer right created or reserved under the
17 governing documents may be transferred except by an instrument
18 evidencing the transfer executed by the developer or the developer's
19 successor. The name of the transferee must be recorded in every county
20 in which any portion of the real property subject to the governing
21 documents is located. Each owner must receive a copy of the recorded
22 instrument, but the failure to furnish the copy does not invalidate the
23 transfer.

24 (2)(a) Upon transfer of any special developer right, a transferor
25 developer is not relieved of any obligation or liability arising before
26 the transfer. Lack of privity does not deprive any unit owner of
27 standing to maintain an action to enforce any obligation of the
28 transferor.

29 (b) If a successor to any special developer right is an affiliate
30 of a developer, the transferor is jointly and severally liable with the
31 successor for any obligations or liabilities of the successor relating
32 to the real property subject to the governing documents.

33 (3)(a) A successor to any special developer right who is an
34 affiliate of a developer is subject to all obligations and liabilities
35 imposed on the transferor by this chapter or by the governing
36 documents.

1 (b) A successor to any special developer right who is not an
2 affiliate of a developer is subject to all obligations and liabilities
3 imposed by this chapter or the governing documents. The successor is
4 not liable for any:

5 (i) Misrepresentations by any previous developer;

6 (ii) Warranty obligations on improvements made by any previous
7 developer;

8 (iii) Breach of any fiduciary obligation by any previous developer
9 or the developer's appointees to the board of directors; or

10 (iv) Any liability or obligation imposed on the transferor as a
11 result of the transferor's acts or omissions after the transfer.

12 NEW SECTION. **Sec. 5.** This act takes effect August 1, 2011.

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